IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

APPEAL NO.585 OF 2006
IN
WRIT PETITION NO.1074 OF 2003

Mrs. Supriya Suresh Ghugare .. Appellant
v/s.
M/s.Finlay Mills .. Respondent

Mr. S.N. Deshpande for the appellant.

Ms.M.H. Doshi for the respondent.

CORAM : R.M.LODHA &
S.A.BOBDE, JJ.

DATED : 15TH NOVEMBER, 2006.

P.C.

We heard Mr. S.N. Deshpande, the counsel for the appellant for quite some time.

2. He submitted that the appellant's employment never came to an end. There was no termination of the appellant's service by the employer. He further submitted that once the appellant established that the employer indulged in unfair labour practice, the Industrial Court was free to pass an affirmative order of backwages. He would, thus, submit that the award of backwages by the Industrial Court was legally just and factually proper and there is no justification in the order of the learned Single Judge refusing to grant backwages upto the year 1995 and

the award of backwages at the rate of 30% of the last drawn wages from 1.1.1996 until the date of reinstatement.

3. The contentions though pressed vehemently, do not appeal us. That by refusal to provide work to the workman, there is wrongful termination, admits of no ambiguity. The Supreme Court, recently in number of cases, has ruled that the backwages do not follow as a matter of course, upon setting aside the wrongful termination. In the present case, the Single Judge observed that the order of the Industrial Court does not reflect the consideration of the question of backwages at all and yet 100% backwages have been awarded. We are in agreement with the learned Single Judge that the order of the Industrial Court does not discuss at all as to how the workman is entitled to the 100% backwages. The two facts are not in dispute. The first, that since the respondent Mill was taken over by the National Textile Corporation in the month of October, 1983, the respondent has not been in service. The second, that the approach notice was given by the appellant for the first time in the month of December, 1995 i.e. almost after 12 years of the wrongful termination. Obviously, in the circumstances, the backwages upto the period 1995 could not have been justifiably awarded. In the case of U.P. State Road Transport Corporation v. Man Singh, decided by the Supreme Court on 13th September, 2006, (2006 AIR SCW 5159), it has been held that when the termination of service is challenged after 12 long years, granting of backwages would not be proper; it is most unlikely that the delinquent remained unemployed during such period. As a matter of fact, we find that the learned Single Judge

showed indulgence in granting 30% of the backwages from 1.1.1996 until reinstatement.

4. The order of the learned Single Judge, as indicated above, warrants no interference in the appeal. The appeal is dismissed in limine.

(R.M.LODHA, J.)

(S.A.BOBDE, J.)